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13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 UNITED STATES OF AMERICA
18 and STATE OF CALIFORNIA, on
19 behalf of CALIFORNIA
20 DEPARTMENT OF TOXIC
21 SUBSTANCES CONTROL,

22 Plaintiffs,

23 v.

24 MONTROSE CHEMICAL CORP.
25 OF CALIFORNIA, et al.,

26 Defendants.

Case No. 2:90-cv-03122 (DOC) (GJS)

**PLAINTIFFS' NOTICE OF
OPPOSITION TO ADDITIONAL
STATUS CONFERENCES ON DEEP-
OCEAN CONTAMINATION**

Judge: Hon. David O. Carter

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15 Toxic Substances Control

16 I. INTRODUCTION

17 The Court scheduled a status conference for August 8, 2024, and ordered
18 Plaintiffs, the United States of America (“US”) and the State of California on
19 behalf of the California Department of Toxic Substances Control (“DTSC”),¹ to
20 produce a member of the federal and state multi-agency workgroup investigating
21 the scope, extent, and environmental impact of contamination at 14 historic waste
22 disposal sites in the deep ocean off the coast of California (“Workgroup”). *See*
23 June 14, 2024, Order (ECF No. 3119) (“Order”). Plaintiffs will produce two
24 Workgroup members at the August 8 status conference in response to the Order.

25 Plaintiffs file this notice to make clear that they believe they and their
26 Workgroup members should not have to appear at all on August 8 because (a) no
27 Party has presented an issue to the Court for decision involving deep-ocean
28

¹ The US is the lead agency overseeing the cleanup of the Montrose Chemical Corporation Superfund Site in Torrance, California (“Montrose Site”). DTSC reviews and consults with the US consistent with Subpart F of the Comprehensive Environmental Response, Compensation, and Liability Act’s (“CERCLA”) National Contingency Plan, 40 C.F.R. §§ 300.500-300.525, as the lead State support agency.

1 contamination—indeed, the area the Workgroup is studying is not part of the
2 Montrose Site; and (b) this Court has no role in oversight of the Workgroup’s
3 activities. Even so, Plaintiffs will produce Workgroup members, out of an
4 abundance of caution, to make sure that there is nothing for the Court to learn
5 about the deep-ocean contamination that might be relevant to the current lawsuit.

6 Plaintiffs are willing to produce the Workgroup members even though
7 Plaintiffs’ counsel have responded to the Court’s inquiries about the deep-ocean
8 contamination at two prior status conferences, and in the Parties’ Joint Status
9 Report, and have previously conveyed to this Court that the deep-ocean
10 contamination is not relevant to the case currently before the Court because the
11 issues presently before the Court do not involve any of the 14 deep-ocean disposal
12 sites. *See* January 22, 2024, Hearing Tr. (attached as Ex. 1); June 6, 2024, Hearing
13 Tr. (Ex. 2); Joint Status Report, filed May 10, 2024 (ECF No. 3107).

14 Plaintiffs also wish to make clear that the Workgroup members who will
15 appear in response to the Court’s Order are able to speak only for themselves based
16 on their personal knowledge and experience. It is not possible for any one
17 Workgroup member to represent the views of the multi-agency, multi-disciplinary
18 Workgroup.

19 **II. BACKGROUND**

20 **A. Montrose’s Historic Ocean Disposal of Acidic Waste That** 21 **Contained DDT**

22 After a review of historic records, the U.S. Environmental Protection
23 Agency (“USEPA”) made initial findings in 2021 describing the historic ocean
24 waste disposal practices of Defendant Montrose Chemical Corp. of California
25 (“Montrose”). *See* USEPA Memorandum dated April 20, 2021, Ex. 1 to
26 Montrose’s Notice of Lodging, filed June 27, 2024 (ECF No. 3120-1). USEPA
27 determined that, from about 1948, Montrose contracted with California Salvage
28

1 Company (“California Salvage”) to bring a tanker truck to its facility in Torrance,
2 which would pump about 3,000 gallons of spent filtrate acid sludge from the
3 facility’s waste storage tank into the tanker truck. This acid waste contained DDT.
4 *Id.* at 3.

5 USEPA also determined that California Salvage drove the tanker truck to the
6 harbor and unloaded Montrose’s acid waste from the truck onto a barge. California
7 Salvage then towed the barge to an approved location offshore and released the
8 acid waste from the barge directly into the ocean (though one deponent heard
9 rumors that California Salvage would sometimes dump the waste closer to shore).
10 *Id.* at 3. This disposal practice continued until the early 1960s, when Montrose
11 built an acid recovery plant at its Torrance facility. *Id.*

12 In its 2021 Memorandum, USEPA stated that Montrose used barges
13 exclusively to dispose of its acid waste in bulk to the ocean; USEPA found no
14 evidence that Montrose put its acid waste in barrels, or any other sort of container,
15 that were then dumped into the ocean. *Id.* at 4.

16 **B. The 2001 Consent Decree Addressing Montrose’s Liability for**
17 **Disposals in “Offshore Areas”**

18 Over 23 years ago, on March 15, 2001, the Court entered a consent decree
19 resolving Montrose’s CERCLA liability for waste disposal in “Offshore Areas,”
20 which include:

21 [T]he areas in and around Santa Catalina and the other Channel
22 Islands . . . the San Pedro Channel . . . any ocean dumpsites used
23 for disposing of wastes from the Montrose Plant Property and
24 any offshore areas to which hazardous substances, including
25 without limitation DDT, aerially or otherwise originating from
the Montrose Plant Property or the Stauffer Dominguez Plant
Property have or may come to be located.

26 2001 Consent Decree ¶ 5(H).
27
28

1 In May 2001, Montrose paid \$73 million to the United States under the 2001
2 Consent Decree, including \$30 million for natural resources damages and \$43
3 million for past and future response costs. *Id.* ¶¶ 7, 11. USEPA has used some of
4 these funds to perform cleanup work at the Montrose Palos Verdes Shelf site,
5 which is a near-shore, underwater (130-490 feet or 40-150 meters deep) area that
6 became contaminated through chemical runoff from the Montrose facility² into the
7 Pacific Ocean via sewage outfalls.

8 The Montrose Palos Verdes Shelf site is different from the deep-ocean
9 Disposal Site #2 identified by the Workgroup. Disposal Site #2 is in the San Pedro
10 Channel about halfway (12 miles or 19 km) between the Palos Verdes Peninsula
11 and Santa Catalina Island. Disposal Site #2 is approximately eight miles (13 km)
12 beyond the Palos Verdes Shelf and is at a depth of around 3,200 feet (1,000
13 meters).³

14 Paragraph 8 of the 2001 Consent Decree contains a covenant not to sue with
15 respect to past and future costs incurred in response to, and natural resources
16 damages from, DDT and other hazardous-substance releases from the Montrose
17 facility to “Offshore Areas.” The Parties have not asked this Court to interpret or
18 apply Paragraph 8 or any other provision of the 2001 Consent Decree in this
19 litigation.

20 **C. The Three Consent Decrees this Court Entered in 2021**

21 On September 30, 2021 (ECF Nos. 3073 and 3074), the Court entered the
22 three other consent decrees that resolved the active litigation and secured Settling
23 Defendants’⁴ commitment to perform cleanup and investigation work valued at

24 ² The Montrose Chemical Corp. facility is located at 20201 Normandie Ave,
25 Torrance, CA 90502.

26 ³ See <https://www.epa.gov/ocean-dumping/southern-california-ocean-disposal-site-2-investigation>.

27 ⁴ The Settling Defendants are Montrose, Bayer CropScience Inc., Stauffer
28 Management Company LLC, and TFCF America, Inc.

1 over \$77 million, as well as to make payments of over \$8 million for past response
2 costs incurred by the US and DTSC. These Consent Decrees are:

- 3 • The “O&M Consent Decree” (ECF Nos. 3087, 2987), which commits
4 the Settling Defendants (together with one other settling defendant
5 who is not a party to the case) to perform long-term operation and
6 maintenance (“O&M”) of the Chlorobenzene Plume groundwater
7 remedy at the Dual Site OU of the Montrose Site;
- 8 • The “DNAPL Consent Decree” (ECF Nos. 3088, 3050), which
9 commits the Settling Defendants to perform the cleanup of dense non-
10 aqueous phase liquid (“DNAPL”) contamination that rests primarily
11 under the footprint of the former Montrose plant property; and
- 12 • The “Southern Pathway Consent Decree” (ECF Nos. 3089, 3054),
13 which commits the Settling Defendants to perform a Remedial
14 Investigation and Feasibility Study in the Southern Pathway portion of
15 the Montrose Site, also known as the “Historic Stormwater Pathway –
16 South.”

17 Work is proceeding smoothly under all of the 2021 Consent Decrees. The
18 Settling Defendants have timely met all deadlines, including, among others, the
19 payment of past response costs, the completion of field sampling, the establishment
20 of financial assurance, and the completion of tasks and submission of deliverables
21 required under the three Consent Decrees. There have been no formal disputes
22 raised by any Party under any of the 2021 Consent Decrees. *See* Joint Status
23 Report, filed May 10, 2024 (ECF No. 3107).

24 Importantly, none of the 2021 Consent Decrees has to do with the deep-
25 ocean contamination in the 14 historic waste disposal sites being addressed by the
26 Workgroup.

**III. PLAINTIFFS SHOULD NOT HAVE TO APPEAR OR PRODUCE
WORKGROUP MEMBERS AGAIN ON THE DEEP-OCEAN
CONTAMINATION.**

**A. There Is No Issue Before the Court Involving the Deep-Ocean
Contamination.**

The Parties agree that the issue of Montrose's liability for any deep-ocean contamination is not before the Court. *See* Joint Status Report, filed May 10, 2024 (ECF No. 3107), at 10. In the operative Third Amended Complaint, and in their prior complaints, Plaintiffs have not sought to compel Montrose or any other entity to pay for or perform cleanup work at any of the deep-ocean waste disposal sites, including Disposal Site #2. Nor have Plaintiffs sought a declaratory judgment on Montrose's liability for any deep-ocean contamination.

The Court has repeatedly acknowledged that there is no issue before it regarding the deep-ocean contamination. At its January 22, 2024, status conference, the Court underscored that its inquiry into deep-ocean contamination is not based on its jurisdiction over this litigation against Montrose:

THE COURT: And *regardless of Montrose's involvement or non-involvement or multiple group, not inviting litigation* -- but what I'm saying is what's the duty of at least inquiring about where we are? Because I could have remedial work being done on the Montrose facility, the waterways and the shelf, and have a, literally, an environmental nuclear time bomb going off. If that's the case, I really would like to know what's being done, because that case could become part and parcel of this case.

January 22, 2024, Hearing Tr., Ex. 1, at 10, line 24 to 11, line 6 (emphasis added).

The Court made similar statements at its June 6, 2024, status conference:

1 THE COURT: From my perspective, I don't care. In
2 other words, I don't care who is involved, whether it's Montrose or
3 somebody else.

4 I care that this isn't being defined. I care that
5 the local officials may or may not know. I care that if we
6 do have an ecological disaster that we're all aware of it,
7 and chose to sit on our hands and do nothing about it.
8 Or that we took some kind of action in terms of
9 coordinating through your good offices, back to the federal
10 government. And we tie in the local people here so they're
11 aware that we may have a real issue.

12 That may not be Montrose's responsibility at all.

13 So I don't care if Montrose.

14 I just care, What do we have down there? So far
15 I've heard, We don't know.

16 June 6, 2024, Hearing Tr., Ex. 2, at 43, lines 24-25 to 44, lines 1-13. And, later in
17 the proceeding:

18 THE COURT: Whether this absolves [Montrose] in terms of clause you
19 referred to or not, *whether this is still liability on*
20 *Montrose's part, that's for the future. I have no opinion*
21 *about that. It's not in front of me.* I just care that the
22 public is knowledgeable about this.

23 *Id.* at 53, lines 23-25 to 54, lines 1-2 (emphasis added).

24 Nevertheless, the Court indicated after extensive questioning of counsel for
25 Plaintiffs about the deep-ocean contamination at its January 22 and June 6 status
26 conferences that it would schedule a third conference, at which it would question
27 the "head" of the Workgroup about its activities, including its communications
28 with Congress and local officials, and about the activities of the Scripps Institution
of Oceanography ("Scripps"):

THE COURT: What I'd really like, and you don't
want me to do it, I'd like the board -- or the head of the
board to appear in my court and give me the information that
both of you are not knowledgeable about. I'd like to know
what they're meeting and what they're doing. I'd love to

1 know that the United States senator is aware of this. I'd
2 love to know that the Board of Supervisors is aware of it.
3 I'd like to get further clarification about what
4 Scripps is doing. I'd like to know if I've got
5 25,000 barrels or non-barrels down there of DDT, or 300- to
6 500,000.

7 *Id.* at 51, lines 11-21.

8 Based on statements by the Court, the purpose of the Court's inquiry appears
9 to be (1) to highlight the potential threats that may be posed by the deep-ocean
10 contamination for the local community, and (2) to encourage federal, state, and
11 local governments to prioritize their response to the deep-ocean contamination:

12 THE COURT: In other words, it's the same place we started when
13 I asked you about the local community being involved in the meetings that
14 we're having and paying you the compliment that
15 They're engaged and knowledgeable and are involved in our
16 case. It's the same thing that I think should be happening
17 here.

18 And but for the *L.A. Times* writing the front-page
19 article and stirring this up, I think everybody has gone to
20 sleep, quite frankly. This Court doesn't want to be in that
21 position if this is truly a public health issue. It sure
22 seems to be of some concern.

23 *Id.* at 52, lines 1-9. These are both laudable goals. But they are outside the
24 oversight function that is appropriate for this Court to perform to ensure that its
25 three 2021 Consent Decrees are successfully implemented.

26 Our Nation's adversarial adjudication system follows the principle of party
27 presentation. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). "[W]e rely on
28 the parties to frame the issues for decision and assign to courts the role of neutral
29 arbiter of matters the parties present." *Id.* Writing for a unanimous Supreme Court
30 in *United States v. Sineneng-Smith*, Justice Ruth Bader Ginsburg explained the
31 principle of party presentation this way:

1 “[C]ourts are essentially passive instruments of government.” They “do not,
2 or should not, sally forth each day looking for wrongs to right. [They] wait
3 for cases to come to [them], and when [cases arise, courts] normally decide
only questions presented by the parties.”

4 590 U.S. 371, 376 (2020) (quotation omitted). *See also Baird v. Bonta*, 81 F.4th
5 1036, 1041 (9th Cir. 2023) (“The principle of party presentation instead requires the
6 court to rely on the parties to frame the issues for decision.” (quotation omitted)).

7 The principle of party presentation applies equally to courts when
8 overseeing implementation of consent decrees. *See, e.g., Keepseagle v. Perdue*,
9 856 F.3d 1039, 1052-53 (D.C. Cir. 2017) (citing *Greenlaw*, court refused to
10 entertain legal arguments raised for the first time on appeal in dispute under
11 settlement agreement). As a general rule, “[o]ur adversary system is designed
12 around the premise that the parties know what is best for them, and are responsible
13 for advancing the facts and arguments entitling them to relief.” *Castro v. United*
14 *States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in
15 judgment).

16 Plaintiffs are not currently seeking to compel Montrose to pay for or perform
17 any cleanup work in the deep ocean, in this or any other proceeding. Settling
18 Defendants are not seeking a determination of their liability for any deep-ocean
19 contamination. Because the Parties are not asking the Court to resolve an issue
20 pertaining to deep-ocean contamination the Court should refrain, under the well-
21 established principle of party presentation, from exploring historic waste disposal
22 in the deep ocean in the context of this lawsuit.

23 **B. The Court Has No Role in Overseeing the Activities of the**
24 **Workgroup.**

25 As discussed below in Section IV(A), the Workgroup is tasked with further
26 understanding Disposal Site #2, including (1) potential waste volumes and
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1 composition; (2) potential risks to human health and the environment; and (3)
2 strategies that may be available to reduce any adverse impacts.

3 There is no litigation before this Court or any other involving the activities
4 of the Workgroup. Therefore, there is no public need for this Court to oversee the
5 activities of the Workgroup in its role as the arbiter of this litigation. The Court has
6 no jurisdiction over the Workgroup or the professionals who collaborate on these
7 issues. They are not subject to the Court's oversight, nor should they be. The
8 Workgroup members must pursue each of these novel and complex issues as they
9 see fit, based on their professional judgment, in the time it takes to produce well-
10 informed determinations and proposed solutions.

11 **IV. WORKGROUP MEMBERS CAN SPEAK ONLY FOR**
12 **THEMSELVES.**

13 **A. The Workgroup Is a Multi-Agency, Multi-Disciplinary, Body**
14 **Charged with Four Specific Tasks.**

15 The Workgroup is comprised of members from 10 federal and state
16 agencies, including: (1) USEPA; (2) the National Oceanic and Atmospheric
17 Administration's ("NOAA") Office of Marine and Aviation Operations; (3)
18 NOAA's Office of Response and Restoration-Assessment and Restoration
19 Division ("ORR"); (4) US Department of the Interior ("DOI"); (5) the California
20 Department of Fish and Wildlife; (6) the California Ocean Protection Council; (7)
21 the Los Angeles Regional Water Quality Control Board; (8) the California State
22 Water Resources Control Board; (9) DTSC; and (10) the US Army Corps of
23 Engineers.

24 These collaborating agencies came together in early 2021 after the *LA Times*
25 reported in October 2020 on the work of scientists conducting research at the
26 University of California at Santa Barbara.

1 Since the inception of the Workgroup, decisions have been driven by senior
2 representatives of the collaborating agencies, including the Deputy Director of
3 USEPA Region 9's Superfund and Emergency Management Division ("SEMD");
4 the Director of NOAA's ORR; the Regional Environmental Officer of US Fish and
5 Wildlife; USEPA Region 9's Office of Environmental Policy and Compliance; the
6 Executive Officer of the Los Angeles Regional Water Quality Control Board; the
7 Chief Deputy Director of the State Water Board; the Deputy Director of DTSC's
8 Site Mitigation and Restoration Program; and the Executive Director of the
9 California Ocean Protection Council.

10 These officials charged the Workgroup with four tasks: (1) document the
11 operational and regulatory history of Disposal Site #2; (2) determine the nature of
12 contamination of Disposal Site #2 and identify areas of significant waste disposal;
13 (3) evaluate environmental conditions and trends of the Southern California Bight
14 (the curved coastline between Point Conception and San Diego that encompasses
15 the Channel Islands); and (4) if conditions at Disposal Site #2 are determined to
16 threaten human health or the environment, conduct technology screening of
17 potential options for addressing risk for Disposal Site #2. *See* Joint Status Report,
18 filed May 10, 2024 (ECF No. 3107), at 14-15.

19 The Workgroup is focusing on the first two tasks; the third and fourth will
20 follow after the first two tasks are completed. *Id.* The Workgroup is investigating
21 Disposal Site #2 first because Scripps is using its novel technology to capture
22 images of the deep ocean floor within Disposal Site #2. *Id.*

23 The individual members of the Workgroup are from a variety of academic
24 disciplines and together bring a broad array of knowledge and experience to these
25 four tasks. *See* Spreadsheet of Workgroup Members, Ex. 1 to Notice of Filing
26 dated June 11, 2025 (ECF No. 3115-1). The Members include environmental
27 scientists, geologists, ecologists, and microbiologists. *Id.* There are also experts in
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1 water quality, spacial data, and ordnance and explosives, as well as project
2 managers and an environmental lawyer. *Id.* The members of the Workgroup have a
3 common understanding that, while the issues before them are novel, all will lend
4 their expertise to determine what can and should be done to address contamination
5 in the deep ocean.

6 Each collaborating agency participating in the Workgroup retains its own
7 autonomy and speaks with its own voice with respect to the deep-ocean
8 contamination. USEPA fulfills the nominal role of coordinating the Workgroup by
9 facilitating, organizing, and setting the agenda for the meetings. Membership in the
10 Workgroup is limited to federal and state agencies to allow members to speak
11 candidly as their agencies navigate uncharted waters. Even so, Workgroup
12 members frequently engage with scientific experts outside government, who have
13 extensively vetted the Workgroup's conceptual model for Disposal Site #2. They
14 also consult frequently with citizens, academics, non-governmental organizations,
15 local governments, and others.

16 Workgroup members respond to any and all inquiries from the public. The
17 Workgroup created a website to share developments with the public, which
18 includes a point of contact for the public to ask questions. Since October 2020,
19 Workgroup members have responded to over 160 such inquiries, including several
20 inquiries from representatives of local governments. Workgroup members have
21 also met with local officials about the deep ocean at their request, including Tim
22 McCosker, City Councilman for the San Pedro area, in June 2023. Partly in
23 response to the concerns of the Court, the United States also recently invited the
24 City and the County of Los Angeles, through their counsel, to consult with
25 members of the Workgroup at any time they wish.

B. The Workgroup Members Who Will Appear on August 8 Can Speak Only for Themselves.

Plaintiffs will produce Workgroup members Judy Huang and Edwin “Chip” Poalinelli at the August 8 status conference. Since 2006, Ms. Huang has been a senior Remedial Project Manager (“RPM”) in USEPA’s Superfund and Emergency Management Division (“SEMD”). The SEMD’s Southern California Branch includes the Montrose Site as well as others in the San Fernando Valley, San Gabriel Valley, and Orange County North Basin, and multiple Federal Facilities. Ms. Huang serves as the facilitator and organizer of the Workgroup and prepares the agenda for each Workgroup meeting.

Mr. Poalinelli was recently promoted to Assistant Director of SEMD’s Southern California Branch and is a newly-appointed Workgroup member. Before becoming the Assistant Director, Mr. Poalinelli served as the first-line supervisor for one of the SEMD’s Southern California Sections, which oversees large Superfund sites, including the Montrose Site. His leadership focus has been on building USEPA’s capacity to develop and sustain relationships with Los Angeles communities, and to improve collaboration among local, state, and federal agencies to clean up sites more efficiently and reduce their impacts on neighboring communities.

Ms. Huang and Mr. Poalinelli have prepared extensively for the August 8 status conference. They (1) reviewed the transcripts of the Court’s January 22 and June 6 status conferences to understand the Court’s expressed interests in the Workgroup’s investigation of the deep-ocean contamination; (2) met with other Workgroup members to gather information specific to the Court’s expressed interests; and (3) met with the employee coordinating USEPA’s response to the deep-ocean contamination to understand the current status of USEPA’s investigation.

1 Ms. Huang and Mr. Poalinelli will endeavor to provide full and fair answers
2 to the Court's inquiries about the activities of the Workgroup. But they must
3 answer the Court's questions based on their own personal knowledge and
4 experience. They may lack technical knowledge in the hands of other Workgroup
5 members that might allow for more nuanced answers to certain questions the Court
6 may ask.

7 Because the Workgroup is a collaboration of independent federal and state
8 agencies, Ms. Huang and Mr. Poalinelli cannot speak for the Workgroup as a
9 whole. They can, however, provide the Court with their own perspectives based on
10 their knowledge and experience.

11
12 Respectfully submitted,

13
14 **FOR THE UNITED STATES OF AMERICA:**

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16 TODD KIM
Assistant Attorney General

17
18 Dated: August 1, 2024

19 /s/ Patricia L. Hurst
Patricia L. Hurst
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

**FOR THE CALIFORNIA
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL:**

Dated: August 1, 2024

/s/ Megan Hey

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ATTESTATION

I hereby attest that all other signatories listed, and on whose behalf
this filing is submitted, concur in the filing's content and have authorized this
filing.

Dated: August 1, 2024

/s/ Patricia L. Hurst

Patricia L. Hurst